

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TREVIS TURNER AND TARIRAI CHIVORE,

Plaintiffs,

-against-

THE CITY OF NEW YORK, a municipal entity, NEW  
YORK CITY POLICE OFFICERS, "JOHN DOES" AND  
DETECTIVE "JOE" COZART, all of the identified and  
non-identified persons in their individual and in their  
official capacities,

Defendants.

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**ANSWER OF DEFENDANTS  
CITY OF NEW YORK AND  
THOMAS COZART**

08 Civ 4779 (PFC)

**JURY TRIAL DEMANDED**

Defendants the City of New York ("City") and Thomas Cozart (sued herein erroneously as "Detective 'Joe' Cozart"), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to plaintiffs' Complaint ("Complaint"), respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
3. Deny the allegations set forth in paragraph "3" of the Complaint, except admit that plaintiffs purport to bring this action as stated therein.
4. Deny the allegations set forth in paragraph "4" of the Complaint, except admit that plaintiffs purport to invoke the jurisdiction of the Court as stated therein.
5. Deny the allegations set forth in paragraph "5" of the Complaint, except admit that plaintiffs purport to invoke the jurisdiction of the Court as stated therein.

6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that plaintiffs purport to invoke the jurisdiction of the Court as stated therein.

7. Deny the allegations set forth in paragraph “7” of the Complaint, except admit that plaintiffs purport to proceed as set forth therein.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “8” of the Complaint.

9. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that the City of New York is a municipal corporation and that it maintains a police department.

10. Admit that Thomas Cozart is employed as a police officer by the City of New York, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Complaint.

11. Admit that plaintiffs were arrested at or about 145<sup>th</sup> Street and 8<sup>th</sup> Avenue on January 12, 2008, otherwise deny the allegations contained in paragraph “11” of the Complaint.

12. Deny the allegations contained in paragraph “12” of the Complaint, except admit that plaintiff proposes to proceed as set forth therein.

13. Deny the allegations contained in paragraph “13” of the Complaint, except admit that plaintiff proposes to proceed as set forth therein.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Complaint.

15. Deny the allegations set forth in paragraph “15” of the Complaint, except admit that the City of New York is a municipal corporation and that it maintains a police department.

16. Admit that Thomas Cozart is employed as a police officer by the City of New York, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Complaint.

17. Admit that plaintiffs were arrested at or about 145<sup>th</sup> Street and 8<sup>th</sup> Avenue on January 12, 2008, and that plaintiff proposes to proceed as set forth therein, otherwise deny the allegations contained in paragraph “17” of the Complaint.

18. Admit that plaintiffs were charged on or about January 12, 2008, otherwise deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph “18” of the Complaint.

19. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the Complaint.

20. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “20” of the Complaint.

21. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Complaint.

22. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Complaint.

23. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the Complaint.

24. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “24” of the Complaint.

25. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “25” of the Complaint.

26. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “26” of the Complaint.

27. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “27” of the Complaint.

28. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Complaint.

29. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “29” of the Complaint.

30. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “30” of the Complaint.

31. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the Complaint.

32. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the Complaint.

33. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “33” of the Complaint.

34. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “34” of the Complaint.

35. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “35” of the Complaint.

36. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “36” of the Complaint.

37. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “37” of the Complaint.

38. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “38” of the Complaint.

39. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “39” of the Complaint.

40. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “40” of the Complaint.

41. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “41” of the Complaint.

42. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “42” of the Complaint.

43. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “43” of the Complaint.

44. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “44” of the Complaint.

45. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “45” of the Complaint.

46. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “46” of the Complaint.

47. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “47” of the Complaint.

48. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “48” of the Complaint.

49. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “49” of the Complaint.

50. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “50” of the Complaint.

51. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “51” of the Complaint.

52. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “52” of the Complaint.

53. Admit that a Blackberry Curve cell phone and a Blackberry Pearl cell phone were vouchered after plaintiffs’ arrests, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “53” of the Complaint.

54. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “54” of the Complaint.

55. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “55” of the Complaint.

56. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “56” of the Complaint.

57. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “57” of the Complaint.

58. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “58” of the Complaint.

59. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “59” of the Complaint.

60. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “60” of the Complaint.

61. Deny the allegations contained in paragraph “61” of the Complaint.

62. Deny that any force used against plaintiffs was unreasonable, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “62” of the Complaint.

63. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “63” of the Complaint.

64. Admit the allegations contained in paragraph “64” of the Complaint.

65. Admit the allegations contained in paragraph “65” of the Complaint.

66. Admit that certain Blackberries found on the persons of plaintiffs were vouchered, otherwise deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “66” of the Complaint.

67. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “67” of the Complaint.

68. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “68” of the Complaint.

69. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “69” of the Complaint.

70. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “70” of the Complaint.

71. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “71” of the Complaint.

72. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “72” of the Complaint.

73. Admit the allegations contained in paragraph “73” of the Complaint.

74. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “74” of the Complaint.

75. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “75” of the Complaint.

76. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “76” of the Complaint.

77. Deny knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph “77” of the Complaint.

78. Admit that Officer Cozart investigated the underlying assault and robbery, otherwise deny the allegations contained in paragraph “78” of the Complaint.

79. Deny the allegations contained in paragraph “79” of the Complaint.

80. Paragraph “80” of the Complaint contains conclusions of law to which no response is required.

81. Deny the allegations contained in paragraph “81” of the Complaint.

82. Deny the allegations contained in paragraph “82” of the Complaint.

83. Deny the allegations contained in paragraph “83” of the Complaint.

84. Deny the allegations contained in paragraph “84” of the Complaint.

85. Deny the allegations contained in paragraph “85” of the Complaint.

86. Deny the allegations contained in paragraph “86” of the Complaint.

87. Deny the allegations contained in paragraph “87” of the Complaint.

88. Deny the allegations contained in paragraph “88” of the Complaint.

89. Deny the allegations contained in paragraph “89” of the Complaint.

90. Deny the allegations contained in paragraph “90” of the Complaint.

91. Deny the allegations contained in paragraph “91” of the Complaint.

92. Deny the allegations contained in paragraph “92” of the Complaint.

93. Admit that plaintiff proposes to proceed as set forth therein, otherwise deny the allegations contained in paragraph “93” of the Complaint.

94. Deny knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraph “94” of the Complaint.

95. Deny the allegations contained in paragraph “95” of the Complaint.

96. In response to the allegations set forth in paragraph “96” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

97. Deny the allegations contained in paragraph “97” of the Complaint.

98. Deny the allegations contained in paragraph “98” of the Complaint.

99. In response to the allegations set forth in paragraph “99” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

100. Deny the allegations contained in paragraph “100” of the Complaint.

101. Deny the allegations contained in paragraph “101” of the Complaint.

102. In response to the allegations set forth in paragraph “102” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

103. Deny the allegations contained in paragraph “103” of the Complaint.

104. Deny the allegations contained in paragraph “104” of the Complaint.

105. In response to the allegations set forth in paragraph “105” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

106. Deny the allegations contained in paragraph “106” of the Complaint.

107. Deny the allegations contained in paragraph “107” of the Complaint.

108. In response to the allegations set forth in paragraph “108” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

109. Deny the allegations contained in paragraph “109” of the Complaint.

110. Deny the allegations contained in paragraph “110” of the Complaint.

111. In response to the allegations set forth in paragraph “111” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

112. Deny the allegations contained in paragraph “112” of the Complaint.

113. Deny the allegations contained in paragraph “113” of the Complaint.

114. In response to the allegations set forth in paragraph “114” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

115. Deny the allegations contained in paragraph “115” of the Complaint.

116. Deny the allegations contained in paragraph “116” of the Complaint.

117. In response to the allegations set forth in paragraph “117” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

118. Deny the allegations contained in paragraph “118” of the Complaint.

119. Deny the allegations contained in paragraph “119” of the Complaint.

120. In response to the allegations set forth in paragraph “120” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

121. Deny the allegations contained in paragraph “121” of the Complaint.

122. Deny the allegations contained in paragraph “122” of the Complaint.

123. In response to the allegations set forth in paragraph “123” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

124. Deny the allegations contained in paragraph “124” of the Complaint.

125. Deny the allegations contained in paragraph “125” of the Complaint.

126. In response to the allegations set forth in paragraph “126” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

127. Deny the allegations contained in paragraph “127” of the Complaint.

128. Deny the allegations contained in paragraph “128” of the Complaint.

129. In response to the allegations set forth in paragraph “129” of the Complaint, defendants repeat and reallege each and every of their responses to the preceding paragraphs of the Complaint as if fully set forth herein.

130. Deny the allegations contained in paragraph “130” of the Complaint.

131. Deny the allegations contained in paragraph “131” of the Complaint.

132. Deny the allegations contained in paragraph “132” of the Complaint.

133. Deny the allegations contained in paragraph “133” of the Complaint.

134. Deny the allegations contained in paragraph “134” of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

135. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

136. Defendants City and Cozart have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants City and Cozart violated any act of Congress for providing for the protection of civil rights.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

137. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City is entitled to governmental immunity.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

138. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct and was not the proximate result of any act of the defendants.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

139. There was probable cause for plaintiffs' arrests and/or detentions.

**AS AND FOR AN SIXTH AFFIRMATIVE DEFENSE:**

140. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

141. Plaintiffs have failed to comply with all conditions precedent to suit.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

142. Defendant Cozart is immune from liability under the doctrine of qualified immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

143. At all times relevant to the acts alleged in the Complaint, defendant Cozart acted reasonably in the proper and lawful exercise of his discretion.

**WHEREFORE,** defendants City and Cozart requests judgment dismissing the

